

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 86 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
  5. Whether it is to be circulated to the Civil Judge? : NO

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JIVRAJBHAI PARBATBHAI PATEL

Versus

GOHABHAI NANJIBHAI SANTIYA  
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Appearance:

MR PK JANI for Petitioner  
MR MRUGEN K PUROHIT for Respondent No. 1  
RULE SERVED for Respondent No. 2  
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CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 07/03/2000

ORAL JUDGEMENT

This revision application is filed against the order dated 5.2.2000 recorded by the learned 7th Jt. Civil Judge (SD) at Rajkot below application Exh. 6 in Regular Civil Suit No. 152/2000 directing appointment of

Commissioner for inspection of the suit property and for drawing the panchanama in respect thereof.

It appears that the property in question is such that both the parties claim their possession over the same. The original plaintiff claimed to be in possession thereof, therefore, there is a dispute about the actual possession in respect to the suit property situated at Rajkot.

So far as this revision application is concerned, I am not required to decide the question of possession for the purpose of this revision application.

The dispute is that the learned trial judge has directed appointment of Commissioner as aforesaid for local inspection and for drawing panchanama. This has been seriously disputed by the present applicant who was the first defendant before the trial court. It has been contended by the learned advocate for the applicant who happened to be the first defendant before the trial court that a commissioner cannot be appointed for bringing evidence with respect to the fact as to who is in possession of the disputed property. In support of the said arguments, the learned advocate for the applicant has cited at least three decisions.

The decisions, no doubt, make it clear that Commissioner cannot be appointed for the purpose of bringing evidence as to who is in possession of a particular property. A Commissioner cannot be entrusted with that function of enquiry into the matter as to who is in possession of the disputed property. This decision is reported in AIR 1998 (Rajsthan), p. 224 in the case of Union of India and another vs. M/s. Kripal Industries, wherein it has been laid down that for making enquiry about fact of possession of disputed property cannot be gone through the Commissioner under Order 26, Rule 9 of Code of Civil Procedure, 1908.

The second decision relied upon by the learned advocate for applicant is reported in AIR 1996 p. 257 in the case of Puttappa vs. Ramappa. There the question as to who is in possession of the property was in dispute. There it was held that Commissioner cannot be appointed to give finding on the said question of possession.

The third decision relied upon by the learned advocate for the applicant is reported in 1991(2) G.L.H. P. 580 in the case of Kishorekumar and another vs. Rajeshkumar Jayprakash Agarwal and Others. This Court

has delivered this judgment, there the Court directed the Commissioner to obtain possession of computers of defendants and to allow plaintiff to get the contents of the computers recorded in a disc or in other form. The Court did not approve the said orders of the trial court.

The facts before me is quite different. The Commissioner appointed by the court has not been required by the court concerned to make enquiry on the question as to who is in possession of the property in question. The Commissioner has to simply record the actual position on the spot without referring to the question as to who is in possession of the said property.

The aforesaid decisions do not say that even for the said limited purpose Commissioner cannot be appointed under Order 26, Rule 9 of Code of Civil Procedure. In view of the above position, the order passed by the learned trial judge cannot be treated to be illegal for any purpose. Again it may be repeated that the Court Commissioner will only record the position on the spot without giving reference to any person who is in possession of the property in question.

With this observation, this Civil Revision Application deserves to be dismissed as is without any merits. It is accordingly dismissed. Rule is discharged with no order as to costs. Interim relief stands vacated.

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